

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN O' CLARK and DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD YARD, Curtis Bay, MD

*Docket No. 00-64; Submitted on the Record;
Issued March 5, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than a 21 percent monaural loss of hearing for which he received a schedule award.

On September 29, 1998 appellant, then a 52-year-old boatjoiner, filed a notice of occupational disease and claim for compensation (Form CA-2), claiming hearing loss caused by noise exposure in the course of his federal employment. He stated that he first became aware of his condition on November 10, 1997. Appellant realized it was caused or aggravated by his employment on September 27, 1998.¹

Accompanying the claim, appellant and the employing establishment submitted statements, personnel records, noise exposure data and audiological test results.

In an October 28, 1998 report, Gregory S. Wilson, the director of clinical audiology, at Audiology Associates, Incorporated, noted that appellant was referred to the center for a complete hearing evaluation on October 14, 1998.² Mr. Wilson produced an audiological report and conducted the audiological evaluation on the same date. He noted that the history reported by appellant was positive for noise exposure while employed by a machine shop for approximately six years and while employed by the Coast Guard shipyard since 1990. Mr. Wilson indicated that appellant had occasional difficulty understanding speech and kidney problems. He noted that appellant had a mild sloping to moderate high frequency sensorineural hearing loss in the right ear and a mild sloping to severe sensorineural hearing loss in the left ear. Appellant's monaural percentage of loss in the right ear was approximately zero percent. His monaural percentage of loss in the left ear was approximately 20.6 percent. Appellant's binaural percentage of loss was approximately 3.4 percent. Mr. Wilson also recommended a hearing aid evaluation.

¹ Appellant retired as of February 5, 1998.

² In his report, Mr. Wilson has date of evaluation as January 14, 1998, however, this appears to be a typographical error as it should be October 14, 1998.

In a November 13, 1998 attending physician's report, Dr. Thomas Manion, Board-certified in internal medicine, diagnosed appellant with high frequency hearing loss and indicated the left ear was greater than the right ear. He checked the box "yes" indicating that he believed appellant's condition was caused or aggravated by an employment activity.

On April 13, 1999 the Office of Workers' Compensation Programs sent a letter to the employing establishment and inquired into appellant's noise exposure.

On May 24, 1999 the Office prepared a statement of accepted facts stating that it accepted that appellant, as a boatjoiner, was required to work with various machinery including air powered tools, grinders, chippers, diesel engines, drill presses, running, hammering on steel plates.

In an undated letter, the Office requested that the Office medical adviser review the statement of accepted facts and the medical record, especially the March 29, 1999 hearing loss evaluation by Mark I. Rubenstein, a Board-certified otolaryngologist. However, the record does not contain this evaluation and it is unclear whether this is a typographical error or whether appellant was sent to Dr. Rubenstein.

On June 17, 1999 the Office referred appellant to an Office medical adviser, who reviewed Gregory Wilson's October 28, 1998 evaluation and his October 14, 1998 audiological report. The Office medical adviser found that appellant had a monaural loss of hearing of 0 percent to the right ear and to the left ear of 20.6 percent for a combined binaural hearing loss of 3.4 percent.

Upon review of the audiogram and Mr. Wilson's October 28, 1998 audiological report, the Office medical adviser determined that appellant sustained 20.6 percent hearing loss in the left ear and recommended a hearing aid, he determined for schedule award purposes that the permanent functional loss of hearing, using the audiogram dated October 14, 1998, revealed that appellant had a 0 percent monaural hearing loss in the right ear and a 20.6 percent monaural loss in the left ear, for a 3.4 percent binaural hearing loss. He further advised that hearing aids were indicated.

By decision dated July 29, 1999, the Office granted appellant a schedule award for 21 percent monaural hearing loss for 10.92 weeks of compensation for the period October 28, 1998 to January 12, 1999.

The Board finds that this case is not in posture for a decision on the issue of whether appellant has more than a 21 percent monaural loss of hearing for which he received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.³ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a

³ 5 U.S.C. § 8107.

determination is a matter, which rests in the sound discretion of the Office.⁴ However, as a matter of administrative practice, the Board has stated: “For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.”⁵

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*⁶ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁷ Then the “fence” of 25 decibels is deducted because as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ The binaural loss is determined by calculating the loss in each ear, using the formula for monaural loss; the lesser loss is multiplied by 5, then added to the greater loss and the total is divided by 6 to arrive at the amount of the binaural hearing loss.¹⁰ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.¹¹

The Office procedures also require that, “after obtaining all pertinent evidence, the claims examiner will prepare a statement of accepted facts. Unless the case file already contains a reliable medical report which fully meets the Office’s requirements, the claims examiner should refer the claimant for audiological evaluation and otological examination which addresses the relationship of any hearing loss to the employment and the degree of any permanent impairment.”¹²

In this case, the record does not reflect that the claims examiner referred appellant for an audiological and otological evaluation.¹³ Additionally, the record reflects that the Office medical adviser reviewed the October 14, 1998 audiogram and October 28, 1998 report, both of which were performed by Mr. Wilson. Office procedures require that the medical examination be conducted by a Board-certified or eligible otolaryngologist.¹⁴ It does not appear that these

⁴ *Kenneth E. Leone*, 46 ECAB 133 (1994).

⁵ *Id.*

⁶ *Stuart M. Cole*, 46 ECAB 1011 (1995).

⁷ A.M.A., *Guides* 224 (4th ed. 1993).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Supra* note 5.

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (December 1994).

¹³ The claims examiner referred to Dr. Mark Rubenstein but there is no evidence of his report in the record.

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (December 1994).

reports met the Office requirements and would not be considered reliable since they did not conform to the standards. Additionally, it does not appear that the audiological equipment met the prescribed calibration protocol as there is no indication regarding the most recent calibration of the equipment.¹⁵ Since the record did not contain a reliable medical report, which fully met the Office requirements, the claims examiner should have referred appellant for an audiological and otological examination to address the relationship of any hearing loss to the employment and degree of permanent impairment.¹⁶

On remand the Office should refer appellant, along with a new statement of accepted facts and the medical records, to a second opinion otolaryngologist for an audiological evaluation and otological examination consistent with Office procedures. After such development as necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated July 29, 1999 is hereby set aside and the case remanded to the Office for further proceedings consistent with this decision.

Dated, Washington, DC
March 5, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ *Id* at 3-600.8(a)(4) and exh. 4.

¹⁶ *See* footnote 12.